

UNITED STATES SECURITIES AND

EXCHANGE COMMISSION

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<i>In re:</i>)	Case No. 22-10964 (MG)
)	
CELSIUS NETWORK LLC, <i>et al.</i> ¹)	Chapter 11
)	(Jointly Administered)
Debtors.)	
)	

**STATEMENT REGARDING DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING AND APPROVING CERTAIN BID PROTECTIONS
FOR THE PROPOSED PLAN SPONSOR AND (II) GRANTING RELATED RELIEF**

The U.S. Securities and Exchange Commission (“SEC” or “Commission”) files this statement regarding the *Debtors' Motion For Entry Of An Order (I) Authorizing And Approving Certain Bid Protections For The Proposed Plan Sponsor And (II) Granting Related Relief* [Docket No. 2151] (the “Motion”).

On March 23, 2023, the Court held a hearing (the “Hearing”) on the Motion and requested that the SEC and other regulators provide a statement to the Court regarding the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

proposed \$5 million break-up fee (“Break-Up Fee”) and expense reimbursement of up to \$13 million (“Expense Reimbursement”) for NovaWulf Digital Management, L.P. (“NovaWulf”).

Under the Plan Sponsor Agreement (as defined in the Motion),² the Break-Up Fee is due if, among other things, the Plan Sponsor Agreement is terminated by the Debtors to pursue an alternative transaction, and, if the Debtors are in material breach of the Plan Sponsor Agreement, upon certain other conditions. The Break-Up Fee is not due if the Debtors pursue an orderly wind down (including conversion to Chapter 7), provided that such orderly wind down is consummated within six (6) months of the termination date and the sale or disposition of the Debtors’ mining assets is consummated within eighteen (18) months of the termination date. Plan Sponsor Agreement, at § 13.02.

The Expense Reimbursement is for up to \$13 million of reasonable and documented out-of-pocket fees and expenses of: (i) NovaWulf; (ii) NovaWulf’s counsel; and (iii) any other accountants and other professionals, advisors and consultants retained by NovaWulf to implement the Restructuring Transactions (as defined in the Plan Sponsor Agreement), regardless of when such fees are or were incurred. The Expense Reimbursement is due if, among other things, the Debtors pursue an orderly wind-down (including conversion to Chapter 7); the issuance by any governmental authority of a ruling or order to enjoin consummation of a material portion of the Restructuring Transactions; or any governmental authority that must grant a regulatory approval has taken any action or failed to take any action that either (i) denies such approval or (ii) imposes a material condition that in the reasonable judgment of the Debtors, based upon the advice of counsel to the Debtors, would reasonably be expected to materially prevent or impede the implementation or consummation of a material portion of the Restructuring Transactions. NovaWulf’s expenses may also be reimbursed by NewCo under the

² A copy of the Plan Sponsor Agreement is attached to the Motion as Exhibit B.

terms of the management agreement. Plan Sponsor Agreement, at §§ 12.01-12.02, 13.01.

The SEC staff has internally discussed the proposed Expense Reimbursement and Break-up Fee and researched whether there are any no-action letters or other published SEC guidance that address whether an expense reimbursement and/or breakup fee for a bidder are appropriate where the proposed transaction is contingent on obtaining regulatory approvals. The SEC staff is not aware of any published information or material that is on point.

Although we have communicated with Debtors' counsel and requested additional information regarding the Restructuring Transaction, we do not yet have all of the facts and details that may be necessary to fully evaluate the transaction. As we obtain additional information, we will consider regulatory implications and immediately communicate to the Court any issues or concerns that may arise.

Dated: Washington, DC
March 28, 2023

UNITED STATES SECURITIES AND
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By: /s/ Therese A. Scheuer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2023, a true and correct copy of the foregoing Statement was furnished to all ECF Participants via the CM/ECF system.

/s/ Therese A. Scheuer

Therese A. Scheuer (admitted *pro hac vice*)